IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 1885 /2001

PETITIONER : Ghanshyam Dwivedi,
Aged about 60 years,
S/oLate Shri Ram Naresh Dwivedi,
Retired Compounder.
R/o Lal Bagh Sindhi Colony,
Street No.2, Rajnandgaon.

- Versus-

RESPONDENTS : 1.Municipal Corporation
Through its Chief Executive Officer,
Rajnandgaon.

2. Director,
Local Self Government,
Raipur.

P. R. No. 2026/01
Presented by Shri Gautam
dated 25.9.01

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION FOR ISSUANCE OF A WRIT OF CERTIORARI, MANDAMUS, PROHIBITION OR ANY OTHER SUITABLE WRIT, ORDDER OR DIRECTION.

AFR 54

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक WP 1885/01 **सन्** **200**

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	12-09-2006 Shri Vinay Pandey, learned counsel for the petitioner. Shri Anand Shukla, learned counsel for respondent No.1. Shri Sandeep Yadav, learned Dy. Govt. Advocate for the State/ respondent No.2. Arguments heard. Order dictated as follows. **ORAL ORDER** This is a petition filed under Article 226/227 of the Constitution of India for quashment of the recovery order dated 4-1-2001 contained in Annexure-P/7 pertaining to recovery of Rs.45,975/- from the petitioner. (2) The brief facts are that the petitioner was working as a Compounder in the establishment of Municipal Corporation, Rajnandgaon, respondent No.1 herein. He attained the age of superannuation, 58 years, on 30-6-1998 and was retired on the said date. Thereafter, an order of re-appointment was issued by the State Government in favour of the petitioner on 13-8-1998 and it was directed that the petitioner, who has superannuated on 30-6-1998 is	

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re-appointed on the same post and on the same pay scale for a further period of one year. A copy of re-appointment order is placed on record as Annexure-P/2. The petitioner, in lieu of the aforesaid re-appointment order dated 13-8-1998 worked for a further period of one year and the aforesaid period ended on 24-8-1999. The petitioner contends that during the said period some change in the age of superannuation took place and instead of 58 years, the age of superannuation was declared as 60 years and on this ground, he filed a petition before the High Court of Madhya Pradesh, Jabalpur, vide Writ Petition No.735 of 1999 (***Ghanshyam Dwivedi vs. State of Madhya Pradesh & Others***). The said writ petition came up for hearing before the Single Bench of the said High Court on 25-2-1999. While issuing the show cause notice, it was directed by the said Court that in the meanwhile, the petitioner shall not be retired, until further orders or until he attains the age of 60 years, whichever is earlier. The aforesaid writ petition further came up for hearing on 15-10-1999 and since nobody appeared on behalf of the petitioner, it was dismissed in default by the High Court on the said date. In consequence of the aforesaid dismissal, the service of the petitioner, which was being continued even after completion of one year, as an effect of the stay order granted in his favour, was

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	terminated on 21-10-1999. It appears that thereafter, counsel for the Corporation, advised that since the petitioner had worked on the basis of the stay order granted by the High Court and ultimately the petition was dismissed and stay also stands vacated, the Corporation is entitled to receive back the amount of pay and other emoluments, paid to the petitioner in between the said period and on this basis, a final calculation was made and ultimately an order of recovery in sum of Rs.45,975/- was issued against the petitioner by the Corporation vide Annexure-P/7, which is under challenge in this petition. (3) Learned counsel for the petitioner submits that in fact, the recoveries on this pretext cannot be made. The petitioner had rendered his services to the Corporation, though on the strength of the stay order granted by the High Court, and the salary/emoluments/ remuneration paid to the petitioner on account of rendering of his services to the Corporation, cannot be received back by the Corporation after utilizing his services for the said period. Referring to the principles of *'no work no pay'*, learned counsel argues that the petitioner has admittedly worked for the said period and he must be paid for the said period and recovery of payment made for the work	

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done, after vacating of the stay order, is totally unknown to law. He prays for quashment of the recovery order.

(4) On the other hand, learned counsel for the respondent - Corporation opposes the prayer.

(5) I have heard learned counsel for the parties and have also perused the record of writ petition.

(6) It is a settled position that the salary is a periodical allowance made as compensation to a person for his official or professional service or for his regular work. It is an agreed compensation for services payable at a regular intervals. Right to salary is a basic right in concept of employment. Section 6(f) of the Transfer of Property Act, 1882 prohibits the transfer of the salary of the public officer, whether before or after it has became payable. Excess payments made on wrong calculations may be recovered but no recovery of entire salary would be made questioning entitlement if the employee was permitted to render his services by the employer and his services were utilized by them as that would amount to "work without pay".

(पीछे देखिये)

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	(7) A perusal of the stay order granted by the High Court of Madhya Pradesh would also show that while passing the said order dated 25-2-1999, the High Court has never imposed any such condition that if either the claim of the petitioner is found to be baseless or he is ultimately held to be not entitled to work to the age of 60 years, remuneration etc. paid to the petitioner would be refundable or the Corporation would be at liberty to receive that amount on consequence of dismissal of main petition. In fact, no order can be interpreted like that and the simple proposition of law is that if a person is allowed to work on a particular post, either through the rights under the statute or under any protection given to him, say under the directions of the Court as in the present case, and he has worked for certain period under such conditions, then the remuneration for the said period must be paid to him unless otherwise is directed in the said order itself, which in fact operates as a direction by which the petitioner is allowed to work. Admittedly the petitioner has been paid for the work done by him. I do not find any logic in taking such view by the Corporation. A person who has worked for a particular period must be paid his remuneration for the said period.	

(पीछे देखिये)

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Gowri	(8) The view taken by the Corporation is not correct. In the result, the petition is allowed. The impugned recovery order dated 4-1-2001 contained in Annexure-P/7 passed by the respondent – Corporation is hereby quashed. In the prevailing facts and circumstances of this case, there shall be no order as to the costs. **Sd/-** **Sunil Kumar Sinha** **Judge**	

(पीछे देखिये)